

DANIEL M. PETROCELLI (S.B. #97802)  
dpetrocelli@omm.com  
VICTOR JIH (S.B. #186515)  
vjih@omm.com  
MOLLY M. LENS (S.B. #283867)  
mlens@omm.com  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-6035  
Telephone: (310) 553-6700  
Facsimile: (310) 246-6779

Attorneys for the Warner Parties

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FOURTH AGE LTD., *et al*,  
Plaintiffs,  
v.  
WARNER BROS. DIGITAL  
DISTRIBUTION, *et al*,  
Defendants.

Case No. 12-9912-ABC (SHx)

**WARNER'S RESPONSE TO  
APPLICATION FOR ISSUANCE  
OF LETTER OF REQUEST FOR  
JUDICIAL ASSISTANCE  
UNDER HAGUE EVIDENCE  
CONVENTION**

**Judge:** Hon. Audrey B. Collins  
**Magistrate:** Hon. Stephen J. Hillman

**Discovery Cut-Off:** July 29, 2014

WARNER BROS. DIGITAL  
DISTRIBUTION INC., *et al*,  
Counterclaim  
Plaintiffs,  
v.  
FOURTH AGE LTD., *et al*,  
Counterclaim  
Defendants.

1           The Tolkien/HC Parties' Application for Issuance of Letter of Request for  
2 Judicial Assistance (the "Application") does not comply with the laws of the United  
3 Kingdom. United Kingdom law limits a party's right to pretrial discovery, which  
4 the Application far exceeds. While Warner does not object to the Tolkien/HC  
5 Parties ultimately obtaining discovery from non-party Microgaming Software  
6 Systems Ltd. ("Microgaming"), the Tolkien/HC Parties should be required to  
7 narrow their requests to comply with United Kingdom law.

8           Although the United Kingdom is a signatory to the Hague Evidence  
9 Convention, the United Kingdom reserved its rights to impose stricter pretrial  
10 discovery standards when evaluating letters rogatory. *See Blagman v. Apple, Inc.*,  
11 2014 WL 1285496, at \*4 (S.D.N.Y. Mar. 31, 2014). Under United Kingdom law,  
12 pretrial depositions are only permitted when "the subject matter of [the] deposition  
13 is restricted to the evidence admissible at trial." *See Blagman*, 2014 WL 1285496  
14 (S.D.N.Y. Mar. 31, 2014) (citing *Apple Computers, Inc. v. Doe*, [2002] EWHC  
15 (QB) 2064, 2002 WL 31476324 (Queen's Bench Division Sept. 18, 2002)).  
16 Further, pretrial requests for documents are permitted only if "each document  
17 sought is separately described." *First Am. Corp. v. Price Waterhouse LLP*, 154  
18 F.3d 16, 23 (2d Cir. 1998); *see also International Agreements and Understandings*  
19 *for the Production of Information and Other Mutual Assistance*, 29 INT'L LAW.  
20 780, 827 (1995) (the Foreign Evidence Act adopted by the United Kingdom directs  
21 UK "courts executing letters rogatory in civil matters to narrow discovery, for  
22 example, to particular documents"). Federal courts routinely deny requests for  
23 letters rogatory that exceed these limitations. *See, e.g., In re Trygg-Hansa Ins. Co.,*  
24 *Ltd.*, 896 F. Supp. 624, 628 (E.D. La. 1995) (denying letter rogatory seeking  
25 deposition in England because "pretrial discovery against non-parties is [not]  
26 allowed in England"); *Commercial Bank of Korea, Ltd. v. Charone, Inc.*, 1992 WL

1 186037, at \*5 (N.D. Ill. July 29, 1992) (denying application as overbroad); *Kia*  
 2 *Motors Am., Inc. v. Autoworks Distrib.*, 2007 WL 4372949, at \*5 (D. Minn. Sept.  
 3 27, 2007) (same).

4 Here, the Tolkien/HC Parties seek broad discovery from non-party  
 5 Microgaming. They seek a deposition of Microgaming's custodian of records but  
 6 have not delineated the scope of the deposition or made any effort to show that the  
 7 deposition will be limited to evidence admissible at trial. *See* Dkt. 177-1. The  
 8 Tolkien/HC Parties further seek the production of documents in response to 25  
 9 documents requests, none of which request particular documents and most of which  
 10 are American-styled "all document" requests. *See id.*<sup>1</sup> Thus, even a cursory review  
 11 of the requested discovery reveals that the discovery is not for use at trial, but rather  
 12 is a "fishing" expedition that the Tolkien/HC Parties hope might yield some  
 13 relevant information.

14 Because the Tolkien/HC Parties' proposed discovery is improper under  
 15 United Kingdom law, it will likely be refused by the Isle of Man. This Court  
 16 should accordingly require the Tolkien/HC Parties to revise and narrow their  
 17 requests in accordance with United Kingdom law.

18 Dated: June 19, 2014

19 DANIEL M. PETROCELLI  
 20 VICTOR JIH  
 21 MOLLY M. LENS  
 22 O'MELVENY & MYERS LLP

23 By:   
 24 Daniel M. Petrocelli

25 Attorneys for the Warner Parties

26 <sup>1</sup> These document requests are overbroad even by American-discovery standards.  
 27 Indeed, the Tolkien/HC Parties' requests to Microgaming are broader than the  
 28 discovery provided by Warner and Zaentz, the parties in this case.